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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN M. CIOFFI and AVNEESH AGRAWAL

Appeal 2009-009318
Application 10/692,297
Technology Center 2400

Before MARC S. HOFF, CARLA M. KRIVAK, and
BRADLEY W. BAUMEISTER, *Administrative Patent Judges*.

KRIVAK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1-25. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

STATEMENT OF THE CASE

Appellants' claimed invention is a method and system for managing (allocating) data rates in links established for data communication systems (Spec. 1:10-12).

Independent claim 1, reproduced below, is representative of the subject matter on appeal.

1. A method for allocating user transmission rates in a communication system that is adapted to permit the users to transmit data simultaneously via shared frequency and spatial resources, the method comprising:

while maintaining the transmission rates of the users to at least a minimum user transmission rate to provide an expected minimum quality of communication for each of the users, incrementally adjusting the transmission rates of the users by iteratively changing the transmission rate of each user as a function of

a resulting vector of transmit powers ensuing from the incremental adjustment of the transmission rate,

a degree of transmission-rate-allocation unfairness relative to the transmission rates of all the users, and

a power-based selection criteria.

REJECTIONS

The Examiner rejected claims 1-25 under 35 U.S.C. § 112, first paragraph.

The Examiner rejected claims 1-25 under 35 U.S.C. § 112, second paragraph.

The Examiner rejected claims 1, 3, 4, 6, 7, 10, 15-18, 20, 21, and 23-25 under 35 U.S.C. § 103(a) based upon the teachings of Zehavi (US 6,005,855).

The Examiner rejected claims 5, 12, 14, and 22 under 35 U.S.C. § 103(a) based upon the teachings of Zehavi and Appellants' Admitted Prior Art (AAPA).

The Examiner objected to Figure 2 of the drawings as failing to comply with 37 C.F.R. § 1.84(p)(5) and to the Specification due to minor informalities.

ANALYSIS

Rejections under § 112, first and second paragraphs

The Examiner finds the recitations in claims 1-25 are not supported by the Specification as it “does not provide sufficient details to enable a skilled [artisan] to make and use the invention” (Ans. 4). The Examiner additionally finds claims 1-25 are indefinite as they fail to particularly point out and distinctly claim Appellants' invention (Ans. 5). The Examiner asserts the portions of the Specification cited by Appellants are unclear and not understandable (Ans. 5, 10). Appellants contend the § 112 rejections are improper (App. Br. 7, 9-19; Reply Br. 3). We agree with Appellants that the Specification provides “explicit support for varying user transmission rates based upon and as a function of the elements as claimed” (*see* App. Br. 7-17, 19; Reply Br. 3).

With respect to claim 4 and lack of antecedent basis, we find claim 4 does not suffer from such deficiency (App. Br. 18-19).

Rejections under § 103

The Examiner finds Zehavi teaches all the features of Appellants' claimed invention except for combining transmit powers into a vector. The

Examiner relies on Official Notice that combining a set of values in a vector is well known in the art (Ans. 6-7).

Appellants assert Zehavi discloses assigning overflow channels based on a user's transmission rate and the availability of overflow channels, whereas Appellants' invention teaches changing the transmission rates of users relative to each other (App. Br. 22). Additionally, Appellants assert the Examiner has merely identified "a vector in the abstract," which is "insufficient to show correspondence to a specific use of a vector," (App. Br. 23-24), and that Zehavi does not teach transmission rate is a function of a power control vector, as claimed (Reply Br. 6). We agree with Appellants' assertions and conclude the Examiner has not established claims 1-25 are obvious over Zehavi (*see* App. Br. 20-24; Reply Br. 5-6).

Objection to Figure 2

Drawing objections are a petitionable matter and thus are not addressed herein (*see* 37 C.F.R. § 1.181).

CONCLUSION

The Examiner erred in rejecting claims 1-25 under 35 U.S.C. § 112, first and second paragraphs, and 35 U.S.C. § 103.

DECISION

The Examiner's decision rejecting claims 1-25 is reversed.

REVERSED

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